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9 **BEFORE THE**  
**RESPIRATORY CARE BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 1H-2007-546

13 JAMES V. MILLER, III  
1930 W. Collage Avenue #199  
14 San Bernardino, CA 92407

**STATEMENT OF ISSUES**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Respiratory Care Board of California.  
21 2. On or about September 7, 2007, the Respiratory Care Board of California  
22 (Board) received an application for a Respiratory Care Practitioner License from JAMES V.  
23 MILLER, III (Respondent). On or about August 29, 2007, Respondent certified under penalty of  
24 perjury to the truthfulness of all statements, answers, and representations in the application. The  
25 Board denied the application on or about August 7, 2008.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...”

7. Section 3732 of the Code states:

“(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

“(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

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1                   8.       Section 3752 of the Code states,

2                   “A plea or verdict of guilty or a conviction following a plea of nolo  
3       contendere made to a charge of any offense which substantially relates to  
4       the qualifications, functions, or duties of a respiratory care practitioner is  
5       deemed to be a conviction within the meaning of this article. The board  
6       shall order the license suspended or revoked, or may decline to issue a  
7       license, when the time for appeal has elapsed, or the judgment of  
8       conviction has been affirmed on appeal or when an order granting  
9       probation is made suspending the imposition of sentence, irrespective of a  
10      subsequent order under Section 1203.4 of the Penal Code allowing the  
11      person to withdraw his or her plea of guilty and to enter a plea of not guilty,  
12      or setting aside the verdict of guilty, or dismissing the accusation,  
13      information, or indictment.”

14                  9.       Section 3752.5 of the Code states:

15                 “For purposes of Division 1.5 (commencing with Section 475), and  
16       this chapter [the Respiratory Care Practice Act], a crime involving bodily  
17       injury or attempted bodily injury shall be considered a crime substantially  
18       related to the qualifications, functions, or duties of a respiratory care  
19       practitioner.”

20                 10.      Section 3754 of the Code states: “The board may deny an  
21      application for, or issue with terms and conditions, or suspend or revoke, or impose  
22      probationary conditions upon, a license in any decision made after a hearing, as provided  
23      in Section 3753.”

24                 11.      California Code of Regulations, title 16, section 1399.370, states, in  
25      pertinent part:

26                 “For the purposes of denial, suspension, or revocation of a license, a  
27       crime or act shall be considered to be substantially related to the  
28       qualifications, functions or duties of a respiratory care practitioner, if it

1 evidences present or potential unfitness of a licensee to perform the  
2 functions authorized by his or her license or in a manner inconsistent with  
3 the public health, safety, or welfare. Such crimes or acts include but are not  
4 limited to those involving the following:

5 (a) Violating or attempting to violate, directly or indirectly, or  
6 assisting or abetting the violation of or conspiring to violation any  
7 provision or term of the Act.

8 (b) Conviction of a crime involving fiscal dishonesty, theft or  
9 larceny.

10 “...”

#### 11 COST RECOVERY

12 12. Section 3753.5, subdivision (a) of the Code states:

13 “In any order issued in resolution of a disciplinary proceeding  
14 before the board, the board or the administrative law judge may direct any  
15 practitioner or applicant found to have committed a violation or violations  
16 of law to pay to the board a sum not to exceed the costs of the investigation  
17 and prosecution of the case.”

18 13. Section 3753.7 of the Code states:

19 “For purposes of the Respiratory Care Practice Act, costs of  
20 prosecution shall include attorney general or other prosecuting attorney  
21 fees, expert witness fees, and other administrative, filing, and service fees.”

22 14 Section 3753.1 of the Code states:

23 “(a) An administrative disciplinary decision imposing terms of  
24 probation may include, among other things, a requirement that the  
25 licensee-probationer pay the monetary costs associated with monitoring the  
26 probation.

27 “...”

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1 FIRST CAUSE FOR DENIAL OF LICENSE

2 (Conviction of Crimes Substantially Related to the Qualifications,  
3 Functions, or Duties of a Respiratory Care Practitioner)

4 15. Respondent's application is subject to denial under section 3750, as  
5 defined by section 3750, subdivision (d), and 3752.5 of the Code, and Title 16 of the  
6 California Code of Regulations, section 1399.370, in that Respondent has been convicted  
7 of crimes substantially related to the qualifications, functions, or duties of a Respiratory  
8 Care Practitioner, as more particularly described in paragraphs 16 through 26, below.

9 16. On or about November 21, 1999, Respondent, while an employee of  
10 the Hollywood Video store in Rialto, CA, stole \$5,111.00 from the store's safe.

11 17. On or about December 5, 1999, Respondent returned to the  
12 Hollywood Video store and took two employees hostage at knife point. Respondent  
13 bound one employee and stole \$4,702.00 from the store's safe and \$512.00 in Sony  
14 Equipment.

15 18. On or about January 31, 2000, an arrest warrant issued for  
16 Respondent in the case entitled *People of the State of California v. James Vernon Miller*,  
17 San Bernardino Superior Court Case FVA012769, for the following criminal counts  
18 committed at the Hollywood Video store in Rialto California:

19 (a) Kidnaping to commit robbery/rape in violation of Penal Code  
20 section 207, subdivision (a), a felony;

21 (b) Robbery in violation of Penal Code section 211 with an  
22 allegation that a deadly weapon was used in violation of Penal Code section 12022,  
23 subdivision (b)(1), a felony;

24 (c) Robbery in violation of Penal Code section 211 with an  
25 allegation that a deadly weapon was used in violation of Penal Code section 12022,  
26 subdivision (b)(1), a felony; and

27 (d) Grand theft of property in violation of Penal Code section 487,  
28 subdivision (a), a felony.

1                   19.     On or About March 23, 2000, Respondent plead guilty to the  
2 following charges in Case FVA012769:

3                   (a) Kidnaping in violation of Penal Code section 207, subdivision  
4 (a), a felony, as a lesser included offense of count one of the complaint, with an  
5 admission that a deadly weapon was used in violation of Penal Code section  
6 12022, subdivision (b)(1), a felony;

7                   (b) Robbery in violation of Penal Code section 211 with an  
8 admission that a deadly weapon was used in violation of Penal Code section  
9 12022, subdivision (b)(1), a felony;

10                  (c) Robbery in violation of Penal Code section 211 with an  
11 admission that a deadly weapon was used in violation of Penal Code section  
12 12022, subdivision (b)(1), a felony; and

13                  (d) Grand theft of property in violation of Penal Code section 487,  
14 subdivision (a), a felony.

15                  20.     On or about May 4, 2000, the Court sentenced Respondent in Case  
16 FVA012769 to eleven (11) years and four (4) months in California State Prison, and to  
17 make restitution in the sum of \$12,650.00.

18                  21.     On or about December 24, 1999, Respondent was arrested for  
19 making criminal threats in violation of Penal Code section 422.

20                  22.     On or about December 28, 1999, Respondent was charged in the  
21 case entitled *People of the State of California v. James Vernon Miller*, San Bernardino  
22 Superior Court Case MSB046067, with the following criminal counts:

23                  (a) Making criminal threats in violation of Penal Code section 422,  
24 a misdemeanor;

25                  (b) Making criminal threats in violation of Penal Code section 422,  
26 a misdemeanor; and

27                  (c) Exhibiting a firearm in violation of Penal Code section 417,  
28 subdivision (a)(2), a misdemeanor.

1                   23.     On or about January 6, 2000, Respondent was convicted in Case  
2 MSB046067 of exhibiting a firearm in violation of Penal Code section 417(a)(2).

3                   24.     On or about January 6, 2000, Respondent was sentenced in Case  
4 MSB046067 to probation for a term of twenty-four (24) months, and ninety (90) days in  
5 San Bernardino County Jail to be served in forty-eight hour increments beginning  
6 February 4, 2000.

7                   25.     On or about February 4, 2000, Respondent failed to appear to begin  
8 serving the custody imposed in Case MSB046067.

9                   26.     On or about April 4, 2000, a warrant issued for Respondent's failure  
10 to report for custody in Case MSB046067.

11                  27.     On or about May 16, 2000, Respondent admitted the probation  
12 violation in Case MSB046067 and his probation was modified as follows:

13                           (a). Serve one hundred and five (105) days in a San Bernardino  
14 County jail facility, with credit for time served of sixteen (16) days. Sentence to  
15 run concurrent with any other sentence. Sentence may be served in any penal  
16 institution.

17                           SECOND CAUSE FOR DENIAL OF LICENSE

18                           (Conviction of Crimes involving theft or larceny)

19                  28.     Respondent's application is further subject to denial under  
20 Government Code section 3750, subdivision (d) as defined by California Code of  
21 Regulations section 1399, subdivision (b) in that he was convicted of a crime involving  
22 theft or larceny, as more particularly described in paragraphs 16 through 20, above, which  
23 are hereby incorporated by reference and realleged as if fully set forth herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying the application of James V. Miller, III for a Respiratory Care Practitioner License;
2. Directing James V. Miller, III to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: November 10, 2008

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
State of California  
Complainant

SD2008800560  
miller\_j\_soi.wpd